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9 **BEFORE THE**  
**BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 857-A

13 **LAN NGOC PHAM**  
14645 Serron Avenue  
14 Irvine, CA 92714

**A C C U S A T I O N**

15 **Civil Engineer License No. C 29595**  
16 **Geotechnical Engineer License No. GE 686**

17 Respondent.

18 Complainant alleges:

19 **PARTIES**

20 1. Joanne Arnold (Complainant) brings this Accusation solely in her official capacity as  
21 the Interim Executive Officer of the Board for Professional Engineers and Land Surveyors,  
22 Department of Consumer Affairs.

23 2. On or about July 12, 1978, the Board for Professional Engineers and Land Surveyors  
24 issued Civil Engineer License Number C 29595 to Lan Ngoc Pham (Respondent). The license  
25 was in full force and effect at all times relevant to the charges brought herein and will expire on  
26 March 31, 2011, unless renewed.

27 3. On or about September 9, 1987, the Board for Professional Engineers and Land  
28 Surveyors issued Geotechnical Engineer License Number GE 686 to Lan Ngoc Pham

(Respondent). The license was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2011, unless renewed.

### JURISDICTION

4. This Accusation is brought before the Board for Professional Engineers and Land Surveyors (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

5. Section 6749 of the Code states, in pertinent part:

(a) A professional engineer shall use a written contract when contracting to provide professional engineering services to a client pursuant to this chapter. The written contract shall be executed by the professional engineer and the client, or his or her representative, prior to the professional engineer commencing work, unless the client knowingly states in writing that work may be commenced before the contract is executed. The written contract shall include, but not be limited to, all of the following:

...

(3) The name, address, and license or certificate number of the professional engineer, and the name and address of the client.

6. Section 6775 of the Code states, in pertinent part:

The board may receive and investigate complaints against registered professional engineers, and make findings thereon.

By a majority vote, the board may reprove, suspend for a period not to exceed two years, or revoke the certificate of any professional engineer registered under this chapter:

..

(c) Who has been found guilty by the board of negligence or incompetence in his or her practice.

7. Section 118, subdivision (b), of the Code provides that the suspension/expiration/surrender/cancellation of a license shall not deprive the Board/Registrar/Director of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

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## REGULATORY PROVISIONS

8. Section 419 of the Title 16, California Code of Regulations states:

For violations of Business and Professions Code sections 6775 and/or 8780 which result in an order issued in accordance with Chapters 4.5 and 5 of Part 1 of Division 3 of Title 2 of the Government Code against a professional engineering and/or a professional land surveying license, the following provisions shall apply to disciplinary orders contained in decisions of the Board:

(a) The minimum disciplinary order shall be reproof. The maximum disciplinary order shall be revocation of the license.

(b) If warranted by extenuating and/or mitigating factors in the matter, the disciplinary order may be stayed by an express condition that the respondent comply with probationary conditions. The minimum time period in which the respondent shall have to comply with the conditions shall be two years. For purposes of this section, this time period shall be known as the "period of probation."

(c) All decisions containing stayed disciplinary orders as described in subdivision (b) shall include . . . probationary conditions:

## COST RECOVERY

9. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

## FACTUAL BACKGROUND

10. On February 28, 2006, the Board received a complaint against Respondent, a licensed civil engineer and a licensed geotechnical engineer, working as Director of Geotechnical Engineering for Peter and Associates in San Clemente, California. The complaint alleged that Respondent falsified an August 3, 2005 soils report regarding a residence in Laguna Niguel to accommodate the homeowner. The complaint also alleged that Respondent placed adjacent residential neighborhood properties in jeopardy by his actions as no subsurface work was performed to determine the soil conditions and the site was underlain by fill soils instead of Capistrano Formation bedrock as Respondent's report stated. The complaint further alleges that Respondent did not evaluate the existing foundation or mention the proposed second story addition, which was necessary to determine if the existing foundation was capable of supporting the new load of a second story.

1 **FIRST CAUSE FOR DISCIPLINE**

2 (Negligence or Incompetence)

3 11. Respondent is subject to disciplinary action under Code section 6775(c) for  
4 incompetence and work below the standard of practice with regard to the August 3, 2005  
5 geotechnical recommendations report for the Sadeghi Residence. Respondent failed to perform a  
6 feasibility study to identify potential geotechnical concerns and constraints. Respondent failed to  
7 perform a subsurface evaluation or search for past grading reports for the property tract and other  
8 construction reports. Respondent stated that the existing structure was founded in bedrock  
9 materials when it was underlain by fill. Respondent misinterpreted the height of the existing  
10 slope. Respondent did not substantiate his opinions regarding settlement and slope creep with  
11 data. Respondent failed to include a slope/foundation setback as required by the building code.

12 **SECOND CAUSE FOR DISCIPLINE**

13 (Failure to Include Necessary Information)

14 12. Respondent is subject to disciplinary action under Code section 6749(a)(3) for failure  
15 to include necessary information when he failed to include his name and license numbers as the  
16 responsible Professional Engineer for Peters and Associates on the Sadeghi Residence project  
17 report.

18 **PRAYER**

19 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
20 and that following the hearing, the Board for Professional Engineers and Land Surveyors issue a  
21 decision:

22 1. Revoking or suspending Civil Engineer License Number C 29595 issued to Lan Ngoc  
23 Pham.

24 2. Revoking or suspending Geotechnical Engineer License Number GE 686, issued to  
25 Lan Ngoc Pham.

26 3. Ordering Lan Ngoc Pham to pay the Board for Professional Engineers and Land  
27 Surveyors the reasonable costs of the investigation and enforcement of this case, pursuant to  
28 Business and Professions Code section 125.3;

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4. Taking such other and further action as deemed necessary and proper.

DATED: 5/18/09

*Original Signed*

JOANNE ARNOLD  
Interim Executive Officer  
Board for Professional Engineers and Land Surveyors  
Department of Consumer Affairs  
State of California  
*Complainant*

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